

*NOTE: For originally amended regulatory text, deletions are denoted in ~~strikeout~~ and additions are denoted underline. For the second amended regulatory text, deletions are denoted in ~~double strikeout~~ and additions are denoted in **HIGHLIGHT**. For the third amended regulatory text, deletions are denoted in ~~diagonal slash marks~~ and additions are denoted in double underline.*

## AMENDED PROPOSED REGULATORY TEXT

### TITLE 22. SOCIAL SECURITY

#### DIVISION 2. DEPARTMENT OF SOCIAL SERVICES--DEPARTMENT OF HEALTH SERVICES

#### PART 2. HEALTH AND WELFARE AGENCY--DEPARTMENT OF HEALTH SERVICES REGULATIONS

#### SUBDIVISION 1. HEALTH AND WELFARE AGENCY

#### CHAPTER 3. SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

#### ARTICLE 9. MISCELLANEOUS, 22 CCR 12900

#### Section 12900

#### Use of Specified Methods of Detection and Analysis for Listed Chemicals for ~~Voluntary Compliance Testing~~ as an Affirmative Defense to an Enforcement Action

- (a) For purposes of ~~both~~ Section 25249.5 of the Act, no knowing discharge or release, and for purposes of Section 25249.6 ~~of the Act~~, no knowing and intentional ~~discharge release or exposure~~ occurs if a person in the course of doing business, otherwise responsible for an alleged discharge, release or exposure can show all of the following:
1. ~~That~~ he or she has properly applied a method of detection and analysis as defined in subsection (f) below for the chemical in question and in good faith conducted a test for the listed chemical at any time within the year prior to the service or filing of a notice or complaint concerning an alleged discharge, release or exposure to the a-listed chemical in question;
  2. That such method of detection and analysis was applied to the same matrix as defined in subsection (f) below, ~~in the same medium~~ in which the discharge, release or exposure is alleged to have occurred or to be occurring;
  3. That ~~the~~ using a method of detection and analysis was conducted by a laboratory certified by the State of California or accredited by the State of California, a federal agency, the National Environmental Laboratory Accreditation Program or similar nationally recognized accrediting organization to perform the particular method of detection and analysis in question; and for that chemical in that medium described in the following subsection, and

4. ~~T~~h~~a~~t ~~a~~l~~l~~ ~~t~~h~~e~~ ~~r~~e~~p~~o~~r~~t~~e~~d ~~r~~e~~s~~u~~l~~t~~s~~ ~~o~~f ~~e~~a~~c~~h ~~a~~n~~d ~~e~~v~~e~~r~~y~~ ~~s~~u~~c~~h ~~t~~e~~s~~t ~~c~~o~~n~~du~~c~~t~~e~~d ~~a~~t ~~a~~n~~y~~ ~~t~~i~~m~~e ~~d~~u~~r~~i~~n~~g ~~t~~h~~a~~t ~~y~~e~~a~~r ~~s~~h~~o~~w ~~t~~h~~a~~t ~~n~~o ~~d~~e~~t~~e~~c~~t~~a~~ble ~~o~~f ~~t~~h~~e~~ ~~c~~h~~e~~m~~i~~c~~a~~l~~ ~~i~~n ~~q~~u~~e~~s~~ti~~o~~n ~~w~~a~~s~~ ~~n~~o~~t~~ ~~d~~e~~t~~e~~c~~t~~e~~d ~~p~~r~~e~~s~~e~~nt.~~~~~~~~~~~~~~~~~~
- (b) ~~F~~o~~r~~ ~~p~~u~~r~~~~p~~o~~s~~e~~s~~ ~~o~~f ~~t~~h~~i~~s ~~s~~e~~c~~t~~i~~o~~n~~, ~~“~~methodof detection and analysis~~”~~ ~~m~~e~~a~~ns ~~a~~ ~~s~~p~~e~~c~~i~~f~~i~~c~~ ~~a~~nalytical ~~p~~r~~o~~c~~e~~du~~r~~e ~~a~~p~~p~~lied ~~t~~o ~~a~~ ~~p~~a~~r~~ticu~~l~~a~~r~~ ~~c~~h~~e~~m~~i~~ca~~l~~ ~~i~~n ~~a~~ ~~p~~a~~r~~ticu~~l~~a~~r~~ ~~m~~e~~diu~~m~~ ~~s~~u~~ch ~~a~~s ~~a~~ir, ~~w~~ater, ~~s~~oil ~~o~~r ~~f~~od, ~~f~~or ~~t~~h~~e~~ ~~p~~u~~r~~~~p~~o~~s~~e~~s~~ ~~o~~f ~~d~~e~~t~~e~~c~~t~~ing ~~a~~nd ~~m~~e~~asu~~r~~ing ~~t~~h~~e~~ ~~c~~h~~e~~m~~i~~ca~~l~~~~'~~s ~~p~~r~~e~~s~~e~~nce ~~a~~nd ~~c~~oncentration. ~~T~~h~~e~~ ~~m~~ethods ~~o~~f ~~d~~e~~t~~e~~c~~t~~ion ~~a~~nd ~~a~~nalysis ~~t~~h~~a~~t ~~m~~ay ~~b~~e ~~r~~e~~l~~ied ~~o~~n ~~f~~or ~~p~~u~~r~~~~p~~o~~s~~e~~s~~ ~~o~~f ~~s~~u~~b~~section ~~(~~a~~)~~ ~~a~~r~~e~~ ~~t~~h~~a~~t ~~a~~r~~e~~ ~~r~~e~~qu~~i~~r~~e~~d ~~o~~r ~~s~~anction~~e~~d~~ ~~b~~y ~~t~~h~~e~~ ~~U~~.S. ~~f~~ederal ~~F~~od ~~and ~~D~~rug ~~A~~dministration, ~~t~~h~~e~~ ~~U~~.S. ~~E~~nvironmental ~~P~~rotection ~~A~~gency, ~~t~~h~~e~~ ~~f~~ederal ~~O~~ccupational ~~S~~afety ~~and ~~H~~ealth ~~A~~dministration, ~~t~~h~~e~~ ~~N~~ational ~~Institute ~~o~~f ~~O~~ccupational ~~S~~afety ~~and ~~H~~ealth, ~~t~~h~~e~~ ~~f~~ederal ~~C~~onsumer ~~P~~roduct ~~S~~afety ~~C~~ommission, ~~t~~h~~e~~ ~~C~~alifornia ~~D~~epartment ~~o~~f ~~H~~ealth ~~S~~ervices, ~~t~~h~~e~~ ~~C~~alifornia ~~E~~nvironmental ~~P~~rotection ~~A~~gency ~~and ~~its ~~c~~onstituentum ~~b~~oards ~~and ~~d~~epartments; ~~a~~n ~~A~~ir ~~D~~istrict, ~~a~~ ~~R~~egional ~~W~~ater ~~Q~~uality ~~C~~ontrol ~~B~~oard, ~~a~~ ~~C~~ertified ~~Unified ~~P~~rogram ~~A~~gency, ~~o~~r ~~o~~ther ~~l~~ocal ~~enforcement ~~a~~gency ~~in ~~C~~alifornia ~~w~~ith ~~j~~urisdiction ~~o~~ver ~~t~~h~~e~~ ~~p~~roduct ~~o~~r ~~a~~ctivity ~~t~~h~~a~~t ~~i~~s ~~t~~h~~e~~ ~~c~~ause ~~o~~f ~~t~~h~~e~~ ~~d~~ischarge, ~~r~~e~~l~~ease ~~o~~r ~~exposure. ~~S~~u~~c~~h ~~m~~ethodof ~~d~~e~~t~~e~~c~~t~~ion ~~and ~~analysis ~~m~~ay ~~b~~e ~~r~~e~~qu~~i~~re~~d~~ ~~o~~r ~~s~~anction~~e~~d~~ ~~b~~y ~~a~~n ~~a~~gency ~~t~~h~~r~~ough ~~its ~~issuance ~~o~~f ~~a~~ ~~p~~ermit, ~~r~~e~~g~~u~~lation, ~~g~~u~~ideline ~~o~~r ~~o~~ther ~~o~~fficial ~~a~~ction ~~o~~f ~~t~~h~~e~~ ~~a~~gency ~~t~~h~~a~~t ~~s~~pecifies ~~o~~r ~~r~~e~~qu~~i~~re~~s~~ ~~t~~h~~e~~ ~~u~~se ~~o~~f ~~a~~ ~~p~~a~~rticu~~l~~a~~r~~ ~~m~~ethodof ~~d~~e~~t~~e~~c~~t~~ion ~~and ~~analysis ~~f~~or ~~a~~ ~~p~~a~~rticu~~l~~a~~r~~ ~~c~~h~~e~~m~~i~~ca~~l~~ ~~i~~n ~~a~~ ~~p~~a~~rticu~~l~~a~~r~~ ~~m~~ediu~~m~~.~~
- (c) ~~W~~h~~e~~r~~e ~~m~~ore ~~t~~han ~~o~~ne ~~m~~ethod ~~o~~f ~~d~~e~~t~~e~~c~~t~~ion ~~and ~~analysis ~~e~~xists ~~t~~h~~a~~t ~~m~~eets ~~t~~h~~e~~ ~~c~~riteria ~~s~~pecified ~~in ~~s~~u~~b~~section ~~(~~b~~)~~, ~~t~~h~~e~~ ~~p~~erson ~~in ~~t~~h~~e~~ ~~c~~orse ~~o~~f ~~d~~oing ~~b~~usines ~~w~~h~~o~~ ~~s~~eeks ~~t~~o ~~r~~ely ~~o~~n ~~t~~h~~e~~ ~~r~~eported ~~r~~esults ~~o~~f ~~t~~h~~a~~t ~~m~~ethod ~~o~~f ~~d~~e~~t~~e~~c~~t~~ion ~~and ~~analysis ~~t~~est ~~r~~esult ~~p~~u~~r~~suant ~~t~~o ~~s~~u~~b~~section ~~(~~a~~)~~, ~~m~~ust ~~e~~ither ~~u~~se ~~a~~ ~~m~~ethod ~~o~~f ~~d~~e~~t~~e~~c~~t~~ion ~~and ~~analysis ~~r~~equ~~i~~re~~d~~ ~~b~~y ~~t~~h~~a~~t ~~p~~erson~~'~~s ~~p~~ermit ~~t~~o ~~b~~e ~~u~~se~~d~~ ~~f~~or ~~d~~e~~t~~e~~c~~t~~ion~~g~~ ~~o~~r ~~m~~easuring ~~t~~h~~e~~ ~~c~~h~~e~~m~~i~~ca~~l~~ ~~i~~n ~~q~~u~~e~~stion ~~i~~n ~~t~~h~~e~~ ~~r~~elevant ~~m~~atrix; ~~o~~r ~~t~~h~~e~~ ~~p~~erson ~~m~~ust ~~u~~se ~~t~~h~~e~~ ~~m~~ost ~~s~~ensitive ~~m~~ethod ~~o~~f ~~d~~e~~t~~e~~c~~t~~ion ~~and ~~analysis ~~a~~vailable ~~t~~h~~a~~t ~~m~~eets ~~a~~ll ~~t~~h~~e~~ ~~c~~riteria ~~in ~~s~~u~~b~~section ~~(~~b~~)~~.~~
- (d) ~~In ~~a~~n ~~enforcement ~~a~~ction ~~f~~or ~~a~~n ~~a~~lleged ~~v~~iolation ~~o~~f ~~S~~ection ~~2~~5~~2~~49.~~5~~ ~~o~~r ~~2~~5~~2~~49.~~6~~ ~~o~~f ~~t~~h~~e~~ ~~A~~ct, ~~t~~h~~e~~ ~~p~~erson ~~a~~sserting ~~t~~h~~is ~~s~~ection ~~a~~s ~~a~~n ~~a~~ffirmative ~~d~~efense ~~s~~hall ~~h~~ave ~~t~~h~~e~~ ~~b~~urden ~~o~~f ~~p~~roof ~~a~~s ~~t~~o ~~a~~ll ~~t~~h~~e~~ ~~f~~acts ~~t~~h~~a~~t ~~e~~stablish ~~s~~u~~ch ~~d~~efense ~~including ~~t~~h~~e~~ ~~b~~urden ~~o~~f ~~p~~roving ~~t~~h~~a~~t ~~i~~n ~~a~~ll ~~m~~aterial ~~i~~nstances ~~e~~very ~~p~~rotocols ~~and ~~p~~rocedures; ~~s~~pecified ~~b~~y ~~t~~h~~e~~ ~~a~~gency ~~t~~h~~a~~t ~~r~~equ~~i~~re~~s~~ ~~o~~r ~~s~~anction~~s~~ ~~i~~t ~~f~~or ~~t~~h~~e~~ ~~p~~a~~rticu~~l~~a~~r~~ ~~m~~ethod ~~o~~f ~~d~~e~~t~~e~~c~~t~~ion ~~and ~~analysis ~~a~~pplied, ~~h~~ave ~~b~~een ~~f~~ollowed.~~~~~~~~~~~~~~~~~~~~~~~~
- (e) ~~E~~x~~c~~e~~p~~t~~ ~~a~~s ~~p~~rovided ~~in ~~s~~u~~b~~section ~~(~~a~~)~~ ~~o~~f ~~t~~h~~is ~~s~~ection, ~~n~~othing ~~in ~~t~~h~~is ~~s~~ection ~~r~~estricts ~~t~~h~~e~~ ~~r~~ight ~~o~~f ~~a~~ ~~p~~laintiff ~~t~~o ~~f~~rom ~~p~~roveing ~~a~~n ~~a~~lleged ~~d~~ischarge, ~~r~~elease ~~o~~r ~~exposure ~~b~~y ~~any ~~a~~dmissib</~~~~~~~~~~~~~~~~~~

(g) This section shall be applicable to any enforcement action pending at the time of this regulation's adoption. For purposes of this section, the following definitions apply:

1. "Method of detection and analysis" means a specific analytical testing procedure appropriate for detecting a particular chemical in a particular matrix such as air, water, soil or food that is applied for the purpose of detecting the chemical or measuring its concentration.
2. "Matrix" means the component or substrate that contains the chemical in question.
3. The phrase "required or sanctioned" means that an agency listed in subsection (b) has identified the method of detection and analysis in a permit (as defined below), regulation, guideline or other official action of the agency that specifies or requires the use of that method of detection and analysis for purposes of detecting or measuring the concentration of the chemical in question in the relevant matrix.
4. "Permit" means a document, license, registration, certificate, or other written means of authorization necessary for a business activity.

AUTHORITY:

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.11, Health and Safety Code.